IN THE

Supreme Court of the United States

October Term, 1961

No. 171

CITY OF MIAMI BEACH and
VILLAGE OF EL PORTAL,
Municipal Corporations of the State of Florida,

Petitioners,

vs.

COUNTY OF DADE, a Political Subdivision of the State of Florida,

Respondent.

PETITION FOR REHEARING ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Your petitioners, the City of Miami Beach, and the Village of El Portal, municipal corporations of the State of Florida, for themselves, and in their representative capacity, for and on behalf of their respective inhabitants, citizens, and taxpayers, deem themselves injured and aggrieved by the Order of this Honorable Court entered on October 9, 1961, which denied their Petition for Writ of Certiorari, to the Florida Supreme Court, and therefore they respectfully pray for a Rehearing thereof.

POINT INVOLVED ON REHEARING

This litigation was begun by the respondent, County of Dade, a political subdivision of the State of Florida, against the City of Miami Beach and the Village of El Portal, both being Florida municipal corporations. The real parties in interest are the inhabitants, citizens and taxpayers of the respective municipalities. They were not named as defendants. To protect rights and interests claimed under Articles IX and XIV of the Federal Constitution they attempted, by and through their representatives, the petitioning municipalities, to intervene in the proceedings then pending in the Florida Supreme Court. That Court denied them leave to intervene. That refusal to consider rights asserted under the Federal Constitution constituted a denial of an opportunity to be heard, and such denial is in and by itself a violation of the Due Process Clause of the Fourteenth Amendment of the Federal Constitution, because nowhere in the judicial process was that right accorded.

ARGUMENT

The petitioning inhabitants, citizens and taxpayers of the respective municipalities are the real parties in interest. As such, they have, and must be accorded an opportunity to be heard. As stated in **Muncie Natural Gas Co. v. City of Muncie 160 Ind. 97, 66 N.E. 436, at 438:**

> " . . . . it may be affirmed that it is not necessary to show that the City has itself sustained damage when it sues for the benefit of its inhabitants, but that it is enough to show that the act tends to injure the public of the municipality."

See, also, **City of Saginaw v. Consumers' Power Co. 213 Mich. 160, 182 N.W. 146 at 151.**

The Florida Supreme Court itself recognizes the propriety of a taxpayer asserting the unconstitutionality of legislation affecting the municipality. **See North Bay Village v. Isle of Dreams Broadcasting Corp. (1950) (Fla) 46 So(2) 196.** Hence, if the municipality is precluded therefrom, there is no remedy whatsoever if these citizens and taxpayers are also denied the opportunity to be heard.

It may have appeared to this Court, and not without justification, that the Petition for Writ of Certiorari herein was that of the petitioning municipalities alone, and that it sought to invoke the jurisdiction of this Court on the ground that the Florida Supreme Court had misconstrued applicable provisions of the State Constitution. Such was not its purpose or intent.

This Petition for Rehearing seeks not merely, however, to clarify the point, but to bring to the attention of this Honorable Court that **the ordinances involved** (Appendix, pp. 62-67) in effect and operation, **levy a tax upon the inhabitants, citizens and taxpayers of the respective municipalities.** It is here and now contended by them that under the Due Process Clause of the Fourteenth Amendment to the Federal Constitution they are entitled, somewhere and at some time in the judicial process to be heard on the constitutionality of that tax; **they were denied that right;** and that the denial of that right constitutes a violation of the Due Process Clause of that Amendment.

CONCLUSION

Petitioners respectfully urge that rehearing be granted, and that the mandate of this Court be stayed pending disposition of the petition.

Respectfully submitted,

CITY OF MIAMI BEACH and
VILLAGE OF EL PORTAL, Florida
Municipal Corporations, as
representatives of and by and for
their respective inhabitants, citizens
and taxpayers.

By _____
HARRY ZUKERNICK
Attorney for Petitioners

CERTIFICATE

I, HARRY ZUKERNICK, an attorney regularly admitted to practice in this Court, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and do hereby certify that the petition is restricted to the ground herein specified, and that, in his opinion, the same is a substantial ground available to petitioner, although not previously presented.

HARRY ZUKERNICK
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Rehearing has been served by me this date personally upon Darry A. Davis, Esq., attorney for the County of Dade, respondent herein this day of October, 1961.

JOSEPH A. WANICK
of Counsel for Petitioners

PROOF OF SERVICE

I, Darrey A. Davis, attorney for the County of Dade, respondent, hereby acknowledge receipt of a copy of the foregoing Petition for Rehearing this day of October, 1961.

(Signature)